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10 Attorneys for Defendant
11 DELTA AIR LINES, INC.

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **(SAN FRANCISCO DIVISION)**

15 SPENCER R. MCMULLEN, suing
16 individually and on behalf of all others
17 similarly situated,

18 Plaintiff,

19 v.

20 DELTA AIR LINES, INC., and
21 defendant Does 1 through 100,
22 inclusive.

23 Defendants.

Case No. CV 08-1523 (JSW)

**RE-NOTICE OF DEFENDANT
DELTA AIR LINES, INC.'S
MOTION TO DISMISS
[FED. R. 12(b)(6)]**

Date: September 26, 2008
Time: 9:00 A.M.
Courtroom: 2 (17th Floor)

Complaint Filed: March 19, 2008
Served: June 16, 2008

24 PLEASE TAKE NOTICE that on September 26, 2008, at 9:00 a.m., or as
25 soon thereafter as counsel may be heard, in Courtroom 2 of the above-entitled court
26 located at 450 Golden Gate Avenue, 17th Floor, San Francisco, California, the
27 Honorable Jeffrey S. White presiding, defendant Delta Air Lines, Inc. (“**Defendant**”
28 or “**Delta**”) will bring on for hearing a motion for an order pursuant to FEDERAL
RULE OF CIVIL PROCEDURE 12(b)(6) dismissing each of the claims for relief of
plaintiff Spencer R. McMullen (“**Plaintiff**” or “**McMullen**”) for failure to state a
claim upon which relief can be granted.

1 This motion is made on the grounds that Plaintiff's claims for relief are
2 preempted by the Airline Deregulation Act (currently codified at 49 U.S.C.
3 41713(b)), and even if they were not, Plaintiff has failed to allege adequate facts to
4 state a claim upon which relief can be granted against Delta.

5 Dated: July 8, 2008

6 Respectfully submitted,

7 SHEPPARD MULLIN RICHTER & HAMPTON LLP

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9 By /s/ Philip F. Atkins-Pattenson
PHILIP F. ATKINS-PATTENSON

10 Attorneys for Defendant
11 DELTA AIR LINES, INC.
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